

REMARKS

Claims 54-59, 62, 63, 66, 92 and 94-99 are pending in this application. Claims 1-53, 60, 61, 63 64, 65, 67-91 and 93 have been cancelled without prejudice or disclaimer to the subject matter recited therein. Claims 54, 62 and 92 have been amended.

Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

Claims 54 and 92 have been amended to recite that the preservation solution comprises dextran. Claim 62 has been amended in view of the amendment to claim 54. Support for the claim amendments can be found throughout the specification and claims as originally filed.

No new matter has been added.

In view of the following, further and favorable consideration is respectfully requested.

I. Allowable Subject Matter

Applicants thank the Examiner for the indication that the subject matter of claim 61 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Solely in order to expedite allowance of the present application, Applicants respectfully submit that claim 54 has been amended to include the subject matter of claim 61. In addition, claim 92 has also been amended to incorporate the same feature. Accordingly, Applicants submit that claim 54 and 92, as well as all of the remaining claims that depend, either directly or indirectly, from either claim 54 and 92 are now in condition for allowance.

II. At page 2 of the Official Action, the Examiner objects to the specification.

The Examiner asserts that the amendment inserting the claim for priority contains new matter because of its incorporation by reference to the content of the two provisional applications.

In view of the remarks set forth herein, this rejection is respectfully traversed.

Applicants respectfully submit that the cross-reference to related applications in the present specification is not new matter, since a proper claim of priority was made at the time of filing of the present application.

Applicants note that the Examiner cites MPEP § 201.11(III) as the basis for this rejection. However, it appears that the interpretation of MPEP §

201.11(III) provided by the USPTO ('the Office') is improper since 35 U.S.C. 119(e) expressly codifies that "***[n]o application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director.***" Applicants respectfully submit that reading MPEP § 201.11(III) in the manner set forth in the Official Action would be in direct conflict with the *codified law, i.e., 35 U.S.C. 119(e)* that the *Manual* describes.

In this regard, 35 U.S.C. 119(e)(1) provides that:

[a]n application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. ***No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director.*** The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application. (Emphasis added).

Applicants politely remind the Office that the MPEP are guidelines, and do not have the effect of law. Since reading MPEP § 201.11(III) to require an amendment to the specification at the time of filing improperly limits the scope of 35 U.S.C. 119(e)(1), it cannot be regarded as having any legal weight.

With regard to the present Application, a proper claim of priority was made in the filing documents and on the face of the Oath/Declaration submitted at the time of filing, the amendment cross-referencing the priority applications is not new matter.

However, should the Examiner maintain the objection to the cross-reference to related applications, solely in order to expedite allowance of the present application, Applicants respectfully request that the Examiner delete the cross-reference to related applications via Examiner's amendment, provided the application is otherwise in condition for allowance. Applicants maintain that this is not an admission that the objection is proper.

In view of the foregoing, reconsideration and withdrawal of this objection is respectfully submitted.

III. At pages 2-6 of the Official Action, 54-60, 62, 63 and 66-99 have been rejected under 35 USC § 103(a) as being obvious over Mann et al, Burdick et al., European Patent Application 1,057,405 and/or Nussinovitch et al.

The Examiner asserts that the rejected claims would have been obvious for the reasons set forth in the Official Action.

Applicants respectfully submit that each of the rejections under 35 USC § 103(a) have been rendered moot by the amendments to independent claims 54 and 92, herein.

As discussed, solely in order to expedite allowance of the present application, Applicants respectfully submit that claim 54 has been amended to include the subject matter of claim 61. In addition, claim 92 has also been amended to incorporate the same feature. Accordingly, Applicants submit that claim 54 and 92, as well as all of the remaining claims that depend, either directly or indirectly, from either claim 54 and 92 are now in condition for allowance.

In view of the remarks set forth herein, it is submitted that nothing in any of the applied references, taken alone or together, renders the presently claimed subject matter obvious within the meaning of 35 USC § 103 (a). Accordingly, the Examiner is respectfully requested to withdraw this rejection.

CONCLUSION

In view of the foregoing, Applicants submit that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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